CHARGE

TO THE

GRAND JURIES

OF THE

COUNTY COURTS OF THE FIFTH CIRCUIT,

OF THE

STATE OF PENNSYLVANIA.

BY ALEXANDER ADDISON,

PRESIDENT OF THOSE COURTS.

VERGENNES:

PRINTED FOR SAMUEL CHIPMAN.

1799.

BRITISH MUSEUM

LIBERTY OF SPEECH,

AND

OF THE PRESS, &c.

IT is of the utmost importance to a free people, that the just limits of their rights be well ascertained and preserved: for liberty without limit is licentiousness; and licentiousness is the worst kind of tyranny, a tyranny of all. To preserve ourselves against this, and maintain true liberty, a line must be drawn between the rights of each; so well marked, as that it be known by all, and so well guarded, as that it cannot be passed by any with impunity. Thus every man will be free; for every man may exercise his rights to the extent of their just limits, and cannot go beyond those limits and encroach on the rights of others. My right to enjoy implies that no man shall disturb my enjoyment. And it is no restraint on my liberty, that in the exercise of my rights, I am restrained from infringing the rights of others. The rule is *So use your own rights as not to injure those of others.* Invasion of the rights of others is tyranny, and if this invasion may be made by every one, it is tyranny of the worst kind, for in proportion to the number of oppressors will be the desire and opportunity of oppression. The true friend of liberty, therefore, is he who will set such strong limits round the rights of every man, that, in the exercise of them, no man can interrupt the rights of any other. And they are not friends of liberty, but promoters of licentiousness, tyranny, and oppression, who contend, that every man ought to have an unlimited exercise of his own rights, without any regard to the rights of others. I can have no right to injure the rights of another; and if I claim this, I am a tyrant and oppressor.

Reputation, character, good name or opinion is a kind of property or possession, which every man, who has honestly acquired it, has a right to enjoy.* Like any other possession or property, it cannot be taken away from us, but by our own acts. The man who invades the reputation invades the right of another. And not only individuals, but more

* *Penn. Const. Art. ix. Sec.* 11.

especially men in public station, branches or departments of the government, the whole administration, and the principles, constitution, or system of government, and the principles or system of public religion and morals, have a right, for the sake of the benefits we receive from them, to reputation, good name and opinion; and the invasion of the reputa- of either of those is an invasion of right, a lessening of our comfort, and motives to duty.

But man is indued with faculties of communicating sentiments, of investigating principles, and of forming opinions and judgments. The exercise of those faculties is a source of pleasure and instruction. A knowledge, and a just judgment of principles, of facts, and of characters, may be useful for the improvement of our minds, and the regulation of our conduct. The exercise of those faculties of opinion, reasoning, judgment, and communication is part of our natural rights.† But the the principles of liberty require, that this right, like all our other rights, be limited so that it never infringe the right of reputation. It must not represent a solemn truth or exercise of religion as false or ridiculous, an established and useful principle or form of our government, as odious and detestable; a regular and salutary act or motive of the administration as unlawful, pernicious, or dishonest; or an upright man as corrupt. For this would be exercising our right of opinion or communication, so as to infringe the right of reputation, and be violating the principles of liberty and natural right.

The principles of liberty, therefore, the rights of man, require that our right of communicating information, as to facts and opinions, be so restrained, as not to infringe the right of reputation. Unless it be so restrained, there is no liberty; for there is no just enjoyment of our rights. And if every man's right of communication be unrestrained, every man's right of reputation is unguarded; and there is in this respect, universal licentiousness, and each man is at the mercy of every man; the most precarious and oppressive of all states. Therefore the freest governments, which have the most regarded and cultivated the principles of liberty, as they have so described and limited other rights, that none should infringe any other, have been careful so to define and limit the rights of reputation, and of communication of sentiments, that the right of either should not infringe that of the other.

We communicate our sentiments by words spoken, written, or printed, or by pictures or other signs. The restraints laid on the exercise of this right so as it may not infringe the right of reputation, differ, according to the way in which the right of communication is exercised. If the right of reputation of a private citizen be infringed by words, spoken no indictment will lie for this injury, which is only a ground for a civil action to recover damages.—"*In foro conscientiæ*," says a learned author, before the tribunal of conscience, "it is no excuse, that the slanderous

† *Penn. Const. Art. ix. Sec. 7.*

words are true; for if a man has been guilty of any thing, which the law prohibits, he is liable to answer for it, in a legal way; but it can answer no purpose for a private person to accuse him thereof; there is a degree of cruelty in so doing, and it must create ill blood. Yet the law does, in compassion to man's infirmities, allow it to be a justification in an action for words spoken, that they are true‡." But when slanderous words are spoken of the constitution, or administration, or any of its acts or officers, they are grounded for an indictment; as a misdemeanor, or breach of the duty of a citizen§. The reason of this is evident; for, as for any injury affecting an individual, the remedy is by action, so for an injury affecting the public, the remedy is by indictment.

With respect to libels, or slander expressed by words written or printed, or by pictures or other signs, and infringing the right of reputation; "they have," says the same author, "at all times, and with good reason, been punished in a more exemplary manner than slanderous words: for having a greater tendency to provoke men to breaches of the peace, quarrels, and murders, they are of much more dangerous consequence to society. Words which are frequently the effect of a sudden gust of passion may soon be buried in oblivion. But libels, besides that the author is actuated by more deliberate malice, are for the most part so lasting, as to be scarce ever forgiven."‖ For this reason, a libel affecting the reputation of even a private citizen, is restrained by being considered as a public offence, and subject to an indictment. But whether, on the trial of such indictment, the truth of the libel may be given in evidence, will depend on the nature of the libel.

Justice Blackstone defines libels, "taken in their largest sense, to be writings, pictures or the like of an immoral or illegal tendency, and in a more particular sense, any malicious defamations of any person, and especially a magistrate, made public, by either printing, writing signs or pictures, in order to provoke him to wrath or expose him to public hatred, contempt or ridicule. It is immaterial with respect to the essence of a libel, whether the matter of it be true or false; since the provocation, and not the falsity, is the thing to be punished criminally. Therefore in a criminal prosecution, the tendency, which all libels have to create animosities, and to disturb the public peace, is the whole that the law considers¶.

The constitution of our state provides "That the printing Presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government: and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. In prosecutions for the publication

‡ 4 *Bac. Abr.* 480.——§ *Ib.*——‖ *Ib.*——¶ 4 *Comm.* 150, 1.

of papers investigating the official conduct of officers, or men in public capacity, or where the matter published is proper for public information the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases."*

From this statement of the law respecting libels, the following deductions seem evident.

1. This right of free communication of thoughts and opinions is, like all other rights, limited by responsibility for its abuse; and laws to punish its abuse, are not, in a constitutional or just sense, restraints on the liberty of the press.

2. The general rule is, that, in indictments for libels, truth cannot be given in evidence.

3. This rule is excluded only from the cases mentioned in this section of the constitution, and remains yet applicable to all other cases.

4. It is only in so far as the paper charged as a libel investigates the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, that the truth thereof can be given in evidence. In all other cases, truth is no justification; for it is the provocation which constitutes the offence.

5. As grand juries hear evidence only in behalf of the prosecution, and in indictments for libels, as in other cases, the jury determine the law and the facts under the direction of the court (that is, conforming to this direction in point of law, have a right to give a general verdict) the grand jury, generally speaking, cannot ascertain whether the libellous matter be true or not; but, if the making or publishing of the libel be proved, they will find the bill, and on the trial before the traverse jury, the court will direct, whether evidence of the truth be admissible or not, and whether the matter be libellous or not; and, under the direction of the court, the traverse jury will determine the law and the facts. If a traverse jury should determine that a paper is a libel, which is not, and convict a man who has committed no offence, the court has a controul over their verdict, by granting a new trial, or arresting judgment. But if the jury determine that a libel is no libel, and acquit a man really guilty of an offence, the court has no controul over this verdict: for a man acquitted of a criminal charge, can never be tried again on the same charge.

Such seems to be the state of the right of communication of thoughts and opinions, according to the law of Pennsylvania. Any thing may be spoken, in terms of decency proper to the subject, of the government, an officer, or an individual, provided the speaker can prove it to be true. But all truths are not useful or proper for publication, therefore all truths are not to be written, printed, and so uttered or published. And there-

* *Const. Art. ix. Sec. 7.*

fore, except in the case of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, if any man write, print, utter, or publish a libel, he may be indicted, convicted and punished, whether the libellous matter be true or not.

Congress, in its last session, has passed a law†, enacting, that if any persons shall unlawfully combine together, with intent to oppose, any measure of the government of the United States, or impede the operation of any law of the United States, or to prevent any person holding any office under the government of the United States from performing his duty: or shall, with such intent, advise or attempt to procure any insurrection, riot, unlawful assembly or combination; they shall be deemed guilty of a high misdemeanor, and be punished by a fine not exceeding five thousand dollars, and by imprisonment, for not less than six months nor more than five years; and may further be holden to sureties for good behaviour. And it further enacts, that if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly and willingly aid in writing, printing, uttering, or publishing, any false, scandalous, and malicious writing against the government of the United States, or either House of Congress, or the President of the United States, with intent to defame the said government, or either House of Congress, or the President, or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either of them the hatred of the people of the United States; or to excite unlawful combinations therein, for opposing or resisting any law of the United States, or any act of the President of the United States done in pursuance of any such law, or of the powers vested in him by the Constitution of the United States; or to oppose or defeat any such law or acts; or to aid encourage, or abet any hostile designs of any foreign nation against the United States, their people or government, such person shall be punished by a fine, not exceeding two thousand dollars, and imprisonment not exceeding to years.

This act, which seems to be best known by the name of *the Sedition Bill*, provides, "That if any person shall be prosecuted under it, for writing or publishing any libel, it shall be lawful for him on the trial of the cause, to give in evidence, in his defence, the truth of the matter contained in the publication charged as a libel. And the jury who shall try the cause shall have a right to determine the law and the fact, under the direction of the court, as in other cases." This clause, clearly borrowed from the section already quoted of the constitution of Pennsylvania, confirms, so far as concurrent expressions of different persons on the same subject can, the construction which I put on that section, that the time for giving in evidence the truth of the libellous matter is at the trial of the cause by the traverse jury.

† 14 *July*, 1798.

No law seems to have been resisted in Congress with more vehemence and passion, by those who opposed all the measures adopted as measures of defence against the hostile spirit of France. And, out of doors, it has been attacked with sullen rancour, as a death-wound to the progress of that detestable system of slander, which has been pursued, with such malignant industry, and calamitous success, against every measure of the administration. And yet, strange as it may seem, this law does not create any new offence; for every thing forbidden by it appears to me to have been, before, an offence at common law. The combinations and attempts therein forbidden are misdemeanors. Any writing of an immoral or illegal tendency is a libel‡. And slanderous words spoken of the government, or its acts or authority, are punishable by indictment§.

It may be said then, why was this law made? Several reasons may be given for it.

1. It is no uncommon thing for a legislature to make an act declaratory of the common law. At this time, it was peculiarly proper to make such an act as a solemn admonition to wicked or unthinking men to abstain from practices, which spread slanders and falsehood, foment divisions and seditions among the citizens, weaken the energy of the government, and, thus rendering the nation defenceless, encourage France, by a prospect of impunity and success, to measures of aggression and hostility.

2. A doubt had been suggested whether the courts of the United States had cognizance of any offences not expressly declared by the constitution, or some law, or treaty of the United States.—I do not think this doubt well founded. The judicial power of the U. States extends to all cases arising under the constitution, the laws and treaties of the United States‖. Hence results a jurisdiction to try and punish, as misdemeanors, all acts tending to violate or weaken the authority of the constitution, or of any act or measure of the government of the United States. For it cannot be supposed that such misdemeanors, should pass unpunished, or that the government of the United States should be obliged to beg protection from the individual states. The doubt however existing, it might be thought proper to remove it.

3. It might be thought proper to pass this law, in order to limit the extent of punishment which might be inflicted on the offender; and to give him the advantage of proving the truth of the libel in his defence.

Whatever may have been the motive for making this law, it was opposed on two grounds: 1, as unconstitutional, and, 2, as inexpedient.

1. It was said to be unconstitutional, because the constitution declares, that "the powers not delegated to the Uuited States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people;"* and more expressly, that "Congress shall make no law abridging the freedom of speech or of the press.§"

‡ 4 *Comm.* 150.—§ 4 *Bac.* 480.—‖ *Const. Art. iii. Sec.* 2.
* *U. S. Const. Add. Art. xii.*.——§ *Ib. Art. iii.*

The constitution, like every other instrument, must be construed by taking the whole together. Among the powers which the constitution delegates to Congress is a power "to make all laws, which shall be necessary and proper for carrying into execution all powers vested by this constitution in the government of the United States, or any department or office thereof‡." It is evident, that the attempts and writings declared punishable by this law, have a direct tendency, differing only in degree from force, to prevent or obstruct the execution of the powers vested by the constitution in the government of the United States. Therefore a law declaring that such attempts and writings are punishable, is constitutional as necessary and proper for the execution of the powers of government.

If the clause of the constitution which prohibits Congress from making any law abridging the freedom of speech or of the press, is to be construed as prohibiting Congress from making any law declaring libels against the government, acts, or measures of the United States, to be punishable; then by the same construction of the constitution of Pennsylvania, which declares, that no law shall ever be made to restrain this right, the most false and malicious libels might be published, against the government, acts, or measures of this state (and of course of the United States) and the assembly would have no power to make any law, declaring such libels punishable; and thus absolute impunity for them would be established. This is a construction too absurd to be received as true. Nor will it justify such construction of the Constitution of the U.S. to say, that it was intended by that constitution, that the authority of passing laws against libels should be left to the individual states: for this would be supposing that the government of the United States must, unless the individual states choose to afford it, be without defence against the most dangerous enemy that can attack it, slander; against which, if unrestrained, no government can support itself. This, therefore, would only remove one absurdity by another, and some other construction of this clause of the constitution must be sought for.

When the press was abused by being made a vehicle of slander, governments laid restraints on it. Books were to be printed only in certain places, only of a certain nature, and only by license of certain persons. In England, these restrictions were imposed first by the authority of the King, part of whose prerogative the regulation of printing was considered; then by the Star-Chamber, an organ of executive authority; and in the time of the Commonwealth, and after the restoration, and after the Revolution, by the Parliament. The law restraining the liberty of the press expiring in 1694, was not renewed, and the press became free.† For freedom of the press consists in this, that any man may, without the

‡ *U. S. Const. Art. i. Sec.* 8.—† *Hume's England. App. James i. vol.* 4. *p.* 318.—4 *Comm.* 151. 2.

consent of any other, print any book or writing whatever: being, in this, as in all other freedom of action, liable to punishment, if he injure an individual or the public.

For thus understanding the liberty of the press, I shall quote the respectable authority of Sir William Blackstone. "Where blasphemous, immoral, treasonable, schismatical, seditious, or scandalous libels are punished, the *liberty of the press*, properly understood, is by no means infringed or violated. The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public: to forbid this is to destroy the freedom of the press: But if he publishes what it improper, mischievous or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning religion and government. But to punish any dangerous or offensive writing, which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundation of civil liberty. Thus the will of individuals is still left free; the abuse only of that free will is the subject of legal punishment. —Neither is any restraint hereby laid upon freedom of thought or inquiry: liberty of private sentiment is still left; the disseminating or making public of bad sentiments, destructive of the ends of society is the crime which society corrects. A man may be allowed to keep poisons in his closet, but not publicly to vend them as cordials.—And the only plausible argument heretofore used for the restraining of the freedom of the press, *that it was necessary to prevent the daily abuse of it*, will entirely lose its force, when it is shewn (by a seasonable exertion of the laws) that the press cannot be abused to any bad purpose, without incurring a suitable punishment.. So true it will be found, that to censure the licentiousness is to maintain the liberty of the press.*

Such is the liberty of the press which the people of the states of America, for its greater security, have made part of their fundamental law. In their state constitutions, they provided, that their legislatures should not make any law restraining the liberty of the press, that is, should lay no *previous* restraints on the press; or as the Pennsylvania constitution expresses it, that "every citizen may freely speak, write, and print on any subject, *being responsible for the abuse of that liberty*."§ The same principle was afterwards adopted into the Federal Constitution; and the section establishing it there is to be construed in the same manner. So that the liberty of the press is precisely as stated by Sir William Blackstone, its being free from all previous restraints, but, as all other

* 4 *Comm.* 151 2.—§ *Art. ix. Sec.* 7.

rights or liberties are, subject to correction for abuse.—On this liberty of the press in England, Parliament may, at any time, impose previous restraints; but here a constitutional provision puts it out of the power of any legislature to do so.

This law then is no abridgement of the freedom of speech, or of the press, and is therefore no infringement of the constitution. So far from this, that, as it makes no new offence, it is no alteration of the criminal code, only as it enlarges the bounds of defence limits the punishment, and (if this be an alteration) gives express jurisdiction to the federal courts. It is not injurious either to the constitution, or to the liberty of the press, but is intended and adapted for the support of both: for it cannot be too often repeated, that "to censure the licentiousness is to maintain the liberty of the press."

To restrain the abuse of my right, or such an exercise of it as shall encroach on a right of another, is no restraint or abridgement of my right: for I can have no right to lessen the right of another. And to claim such an unlimited use of my right, as to encroach on the right of another is to claim, not liberty, but tyranny; not right, but oppression. "I may freely speak, right, and print, on any subject;" but "I am responsible for the abuse of this liberty." Unless I may speak, write, and print, my right will not be sufficiently secured: and unless I be responsible for the abuse of this liberty, the rights of others would not be sufficiently secured. Therefore to secure all, and establish true liberty, I must be free to speak write, and print, but be also responsible for the abuse of that liberty. This is a sound principle, and applies to all rights whatever.—It applies to our right of action, as well as to our right of expressing our sentiments in every way. I may ride a horse, but I must not ride over a man. I may walk where I please, but not on my neighbor's garden. I may use my cane, but not to strike any man I meet. Such is the liberty of speech or of the press. A law that any printing press should be locked up, and the key kept by a certain officer, or that no book should be printed without permission from a certain officer, would be a law abridging the liberty of the press. A law, that a man should not speak without permission, should speak only on certain subjects, or should have a gag put in his mouth, not to be taken out but by a certain officer, would be an abridgement of the freedom of speech, would be indeed a *gagging-law*. But because the constitution denies the legislature any power to make a law like this, or to make any law laying a *previous* restraint on speech or the press, to claim therefore a right from the constitution, to speak, write, or print sedition, impiety blasphemy, or any falsehood, however gross, indecent, and dangerous, is claiming not liberty but licentiousness. Will any one say that my right of freedom of speech entitles me to propagate with impunity any slander I please upon all my neighbours? What character would be safe, and what life would be free from misery, were this liberty of speech to be indulged? There is no such liberty. A liberty to destroy reputation would b

as unjust, as a liberty to destroy life. Every man is free to speak, but he speaks at his peril, and is answerable for all he says, if it tend to the injury of another. It is not his opinion of its being proper or true, that will justify him.—When he utters it, he is answerable for its truth and propriety; and the opinion of a court and jury, not his opinion must decide on its truth and propriety. Every repeater of the tale is, in like manner answerable as the author. So of libels or written or printed slander, with this difference, that, as the provocation by them is more dangerous they are less indulged; and except in the case of matters proper for public information, the proceedings of government, and the official conduct of officers, or men in a public capacity, truth is no justification. Even in cases where truth is a justification, the truth must be made out to the satisfaction of a jury.—That the libeller may have thought it true, though it may extenuate, will not justify the offence: for no man is to be judge in his own cause, and my opinion will not justify me in doing an injury to my neighbor, in his reputation, any more than in his person or property. Every man, therefore, writes and prints, as he speaks, at his peril; and the publisher of a libel it answerable, in like manner as the author. And both are answerable, as in any other offence, to the judgement of a court and jury, by whose opinion, and not of the offender, must the guilt or innocence of the action be determined. And such restriction, if I may so call it, or correction of the abuse, of freedom of speech and of the press, is not only perfectly consistent with the principles of civil liberty in general, and with the rules of our constitution: but is necessary for maintaining the genuine liberty of speech and the press. For, of all enemies to liberty, licentousness is the greatest.

2. I think, the expediency of this law can be as clearly shewn, as its constitutionality: and, if so, there will be not only duty, but pleasure in the obedience we yield to it.

Speech, writing, and printing are the great directors of public opinion, and public opinion is the great director of human action. Of such force is public opinion, that, with it on its side the worst government will support itself; and, with it, against it, the best government will fall.—All governments are supported by it; and, without it, can no government be supported. What is the force in the power of any government, compared to that of the people, governed by it, if the people choose to resist? And will they not choose to resist, if their opinions be set against the government, their passions roused to enthusiasm, and an opportunity offered for success. And all this may be done by means of clubs, societies, and the press.—Give to any set of men the command of the press, and you give them the command of the country for you give them the command of public opinion, which commands every thing.—Let therefore, clubs, societies, and the printing presses attack any government, however free, and however strong, they will infallibly destroy it.

It will not be pretended that the old government of France was good, nor denied that it needed reformation; but, in so far as it possessed

strength, and as it was supported by the prejudices of the people in its favor, it is a proper instance of what I have stated. The French revolution was accomplished by a gradual operation on public opinion. For many years before, the seeds of insurrection had been busily sown in the minds of the people. Clubs, and societies, under various names and pretexts, were established through the kingdom. The printing presses were occupied. Pamphlets and books were dispersed. New principle were broached, supported and established. Under the sanction of philosophy and reason, all prejudices in favor of religion and government were gradually sapped, to make way for liberty, equality, and the rights of man; fine words, which as they were little understood, were the more admired. All were men, and priests and princes were no more. All respect for office ceased: and an insult to a bishop or a king was no more than an insult to an equal. Religion was but a state trick, and its author and ministers but imposters. Public opinion, the great pillar of this, as of every other government, being thus withdrawn, the mighty fabric of the monarchy, which, supported by public opinion, had stood the blasts of ages, was touched by a slight shock, and in a moment crumbled to pieces.

What was the consequence? Not satisfied with reformation, public opinion, directed by clubs and the press, was employed to lead the nation to excess, anarchy and slavery. The desperate succession of tyrants, which hath since ruled France was supported by public opinion, directed by clubs and the press, till it acquired an enormous armed force. When disgusted by its cruel and unprincipled oppression, public opinion began to revolt and the printing presses to speak against it; even this tyranny, with all its vast armed force, felt that it could not resist public opinion, and, to silence it, shut up the presses; and now extorts, from an unhappy nation, a sullen and reluctant submission, by its armed force, and an enslaved press.

The same seeds of dissolution were sown in most of the governments of Europe, by the corruption of public opinion effected by a combination of clubs and the press. Many have fallen sacrifices. And nothing but the dreadful example, which the French revolution furnished, of the fatal danger of substituting abstract principles instead of the maxims of experience, could have preserved many other governments.

One would have thought, that the United States of America, blest with the best practicable model of republican liberty, which human wisdom hath yet been able to suggest, would have escaped this greatest of all plagues, the corruption of public opinion; and that all men would have united in approbation of a system of government which must be acknowledged excellent, and of an administration, which must be acknowledged to have been wise, enlightened and honest. Yet, unfortunately, this plague hath reached us also; and our government has

been assailed with the grossest slanders, by many who perhaps believed, and by many who surely could not believe the slanders which they uttered. The tongue, the pen, and the press; conversations, letters, essays, and pamphlets, have represented our truly republican and balanced constitution as a system of tyranny; and our upright and wise administration as mischievous and corrupt. Our wisest and best public officers have had their lives embittered, and have been driven from their stations by unceasing and malignant slander. And thus has it been attempted to withdraw, from our excellent government, the only effectual support of any government, public opinion; and thus to withdraw all reverence from station and authority, deprive the constitution, the laws, and the administration, of all respect and efficacy, and surrender the nation a prey to any invader.

France saw our condition, and attacked us: for France attacks a nation only when she has rendered it defenceless, by dividing the people from the government, and withdrawing from the government the support of public opinion. In this condition any nation is an easy prey. To our complaints she pretended no justification, and replied to our resentment, that she had a party among ourselves. She rested on the influence of clubs and the press, and on the devotion to her, which they had produced among us. Some of our presses seem to have been constantly devoted to her views. Many of our citizens, and of our men in public stations, seem to have favored those measures, on which France must have depended for success against us.—And our government was threatened with the loss of its best support, the hearts of its citizens, by means of falsehood, misrepresentation, and the vile arts of foreign enemies, and discontented, factious, and seditious men. In this situation, in which no government can longer stand, and threatened with a war from France, was it not the duty of our government, to disarm France of that weapon, by which she could most effectually injure us, the power of spreading slander and sedition against the government, and alienating from it, its true support, the affections of its citizens? It was its duty, and it would have been inexcusable, if it had omitted this duty. Without suppressing slander and sedition against the government, the support of public opinion cannot be preserved to it: and without the support to it of public opinion, all other defence against France is vain.

On these grounds it appears evident to me, that this law is not only expedient, but necessary. And it may be laid down as a general rule, that it will be impossible to prevent the corruption of public opinion, or to preserve any government against it; unless there be laws to correct the licentiousness of speech and of the press. True liberty of speech and of the press consists in being free to speak, write, and print, but being, as in the exercise of all our other liberties, responsible for the abuse of this liberty. And whether we have abused this liberty or not, must,

like all other questions of right, be left to the decision of a court and a jury. This is the universal test, by which the exercise of all our rights, must be tried. Nor is the subjection of our right of freedom, of speech and of the press to this test, any more a restraint on that right; than the subjection of our rights of life and of property to the same test, is a restraint on those rights. By this test must the exercise of all our rights be tried, or no man could enjoy any right whatever. If while our right to life and to property is submitted to this restriction, we yet believe we are free, shall we think our liberty infringed, by subjecting to the same restriction, our right to speak and print?

This law takes from no man any liberty but a liberty of doing mischief. And so far is it from being true, that this law is any violation of liberty, that, it may be safely averred, without such laws, for punishing the abuse of the freedom of speech and of the press, liberty cannot be preserved; every man will be a slave to the malignant passions of every other, truth and justice will be banished, the authority of government destroyed, and malice, anarchy, confusion and every evil work established.

Our constitution is excellent, our administration is wise and honest, and has no interest separate from that of the people. On the support of such an administration such a government depends our liberty. But, let me repeat, no administration or government can stand against the corruption of public opinion; and let me therefore solemnly admonish you, as you value the peace and liberty of yourselves and your posterity, seriously to reflect on the truth of this. We have seen an insurrection promoted by the corruption of public opinion. An invasion is invited by it.—How many shocks of this kind our government is doomed to stand, only the Ruler of the world knows. Let us take warning from our own experience, and the fate of other nations. Let all friends to liberty and order unite in suppressing slander: for, where it prevails, there will be no happiness, no government. Of all slanders those of the press are most dangerous. Presses established to run down the government are the most destructive of all treasons.—This ought to be well considered; for every one who encourages such presses, or contributes to their support, is a partner in their guilt. Every one who reads their productions with approbation, sucks in disease upon his mind: and every one who repeats them to others spreads the infection. What would we think of a set of men, who should agree to hire a number of persons to run through the country, and report falsehoods and slander? Precisely such, and more dangerous, is the guilt of those who contribute to the support of a slanderous Press. They are wounding their own country's peace, and undermining the government.

But you will say, *We desire to hear both sides, that we may know the truth.* My friends, truth has but one side: and listening to error and

falsehood is indeed a strange way to discover truth. Take the representations which its friends have made of the conduct of government; have you ever found falsehood in them? Take the contradictory statements made by its enemies—have you ever found truth in them?

You may yet say. *We have not the means of knowing on which side the truth lies; and we, therefore, give no preference to any but hear all.*—What would you think of a Protestant who should say thus? *The Lutherans and Calvinists differ in opinion, the Catholics from both, and the Mahometans from them all; I know not on which side the truth is; I will, therefore, pay a Lutheran minister, a Calvinist minister, a Catholic priest, and a Turkish dervis; and then, I shall be sure of knowing the truth.* Would we think that this man had any regard to truth or religion? Instead of acquiring knowledge, would he not confuse his mind, and lose sight of both truth and duty? As in religion, so in government, a sincere enquirer after truth will always find means of discovering it. And it is only their enemies, and hypocritical pretenders to sincerity, who, under pretence of searching for truth, wander through the endless varieties of error, and affect to think, there is no certainty.

There is hardly any part of government, which, as of religion, has not been misrepresented by its enemies. Now, though of all its parts, the people generally have not had an opportunity of being fully satisfied, yet of some, they have had this opportunity. And wherever they have had such opportunity, they must be satisfied, that the conduct of government has been right, and the misrepresentation of it false and malicious. No part of the conduct of our government has been more misrepresented, than its conduct with respect to France. Yet, when fairly stated, in a way that the greatest slanderers dare not contradict, how honest, wise, and praise worty does it seem! Ought we not therefore to believe, that, if we understood all the rest, as well as this part, the whole would appear as unexceptionable? This would be our duty between man and man; and it is also our duty between citizens and the government.

Another duty, and a mean of information, is to search at the best sources of information. You ought never to believe a slander on government, merely because it is stated in a newspaper or a pamphlet, or reported by those on whose judgment, veracity, and opportunity of knowing, you have not confidence. As if the thing concerned your own house or estate, or the character of your friend, go to those in whose veracity and judgement you would confide in matters of the greatest importance. For, be assured, no matter is of greater importance, than a just confidence in government. The men, who endeavor to rob you of this, are the worst enemies of your peace. If they can succeed in robbing your minds of this confidience, they rob you of your liberty; for they deprive government of its authority; and government without au-

thority is anarchy; and anarchy is the worst tyranny. No crime, therefore, is greater, than that slander, which, diminishing the people's confidence in the government, diminishes their security, and destroys their liberty. And no crime more deserves the vigilant and severe animadversion of a Grand Jury.

ON THE ALIEN BILL.

IN circumstances of extraordinary danger or alarm, extraordinary measures must be adopted: for ordinary means are incompetent for extraordinary occasions. Though I may not kill a man, while I am in no danger from him; yet if he be in the act to kill me, or I find him breaking into my house in the night-time to rob me, I may put him to death. This results from the general law of self-defence. The sacred right of property will not forbid us when a house is on fire, to pull down the adjacent buildings, to save the rest of the town.—Nor will the right of personal liberty restrain the magistrate from committing to gaol a man who has actually done no mischief, if another is justly afraid of mischief being done by him. All these are extraordinary cases, to which the ordinary rules of property, or of personal liberty and safety, are not applicable: and the violation of those rules, in such cases, is, in true construction, no violation of them; for they were never meant to be applied to such cases, but only to the ordinary and peaceful state of society, and must yield to the great law of self-preservation and common welfare.

Nations, like individuals, are also bound, by the law of self-preservation, in times of danger, to adopt measures, which would be altogether unjustifiable in ordinary times. They may destroy an hostile army.—If a hostile army be suffered to march through a neutral country, to attack another nation, this nation may also enter that country and oppose its enemies. If fields, gardens, houses, or towns, shelter its enemy from the full force of attack, they may be destroyed. If it be necessary to weaken the enemy by want, the corn, cattle, and all kinds of provision may be carried off, and the frontier made, as it were, a desart. Such things, are, in times of danger, justifiable by the law of self-defence; though in ordinary times they would be unlawful and inhuman. On the same principles of self-defence, to prevent a dangerous communication of intelligence, or any measure unfavorable to its safety, when a

nation is, or likely to be, engaged in a war, it may order any aliens, who may be suspected of promoting or favoring the designs of its enemy, to depart out of its territory. This may be always, and has been generally done. And unless where this right is regulated by treaty, this may be done at the discretion of the government under which the aliens reside. For every government must be sole judge of what is necessary to be done, for its own safety or advantage, within its own territory.* And, even with respect to their own subjects, most governments have reserved a right, without being required to shew any cause, to commit to close custody any subject suspected as dangerous to the peace or welfare of the community. In England, this right is restrained by the writ of *Habeas Corpus*, which gives to every subject imprisoned an opportunity of requiring the cause of his commitment, and of obtaining in all proper cases, his enlargement. When, therefore, the king of Britain's ministers find it necessary, for political reasons, to restrain the personal liberty of any subject, without shewing any cause for it, a law must be obtained from Parliament, suspending the privilege of the writ of *Habeas Corpus*; and Parliament may, whenever it pleases, pass such a law.

Conforming to the principles of liberty inherited from our ancestors, the privilege of the writ of *Habeas Corpus* is established, as a principle, in the government of this State and of the Union.† And, though Congress or the General Assembly may, respectively, like the British Parliament, by law, suspend this privilege; yet they cannot, like the British Parliament, pass such law whenever they please. For the Federal and State Constitutions have declared that "The privilege of the writ of *Habeas Corpus* shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it." So that, in this country, no citizen can be deprived of his liberty, without an avowed and sufficient cause, unless in case of rebellion or invasion, the legislature think the public safety requires it, and suspend the privilege of the writ of *Habeas Corpus*. But here the Constitution leaves aliens, as in other countries, to the protection of the general principles of the law of nations, or of the particular provisions of treaties made between the United States, and the government whose subjects or citizens the aliens severally are.

Congress, in its last session, found the United States in extraordinary circumstances of peril, unequalled since their Independence was solemnly acknowledged. France, having, without any respect to the principles of liberty, the law of nations, or the rights of individuals,

* *Vattel. L. of N. Prel. sect.* 17, 20. *B.* 2, *sect.* 94.

† *U. S. Const. Art.* 1, *sect.* 8. *Penn. Const. Art.* 9, *sect.* 14, 1 *U. S. L.* 101. 2 *St. L.* 241.

plundered the land to the utmost reach of her grasp; extended the same unprincipled rapacity to the ocean, and plundered indiscriminately friends and foes. Of all nations and governments none had with more affection regarded the revolution of France, none had more assiduously cultivated her friendship, none had more scrupulously observed the rules of neutrality, or, consistently with those rules, partially indulged the views of France; than the nation and government of the United States. And if neutrality, justice, affection, and gratitude, could have exempted any government and nation from injury from France, the nation and government of the United States might justly have claimed this exemption. But what weight has justice, with a government without principle, without religion, and without an interest in the prosperity of the people over which it is placed! If the French government had regarded only the interest of France, it would have cultivated the affections of America. But the French government, like the false mother indifferent to the life of the child, regarded not the interest of the French nation, but the indulgence of its own passions, and the triumph of its own pride, which exalted by success, beyond the bounds of moderation, sought to humble all authorities in universal prostration at its feet. She commenced and prosecuted spoliation of our trade to an extent that threatened its ruin: and the dismal effects are displayed in the bankruptcies of our merchants, and the languishing state of our commerce and agriculture. The American government, patiently and peacefully sought redress by negociation: but the presumption and rapacity of France, rose in proportion to the patience and peace of America; and, with unexampled insolence, she repeatedly drove away our ambassadors sent to claim only an exemption from injury, and a payment of just debts; required us, by an ignominious tribute and bribe, to double the damage we had suffered; and threatened us, if we refused this, with war and ravage on our coasts, burning of our towns, and even dissolution as a nation.

What could have swelled the insolence of France to this pitch of extravagance? Had we done her any injury? She can shew none. Was it her succes, and mighty power? We are at a distance to defy her power. How then dared she thus to insult and injure us? She accounted us a divided people, split into factions, among which she had zealous partizans. In this state, she knew, we must be an easy prey: in this state, she knew we could make no resistance. And, while we remained in this state, she might safely persist in her proud oppression: and she did so. For men, without regard to religion and jutice, *will* do whatever they *can* do: and nothing but resistance and force will restrain them from injuring others. France had long known and promoted divisions and factions among us. And had sent spies into all parts of our country, to procure information of our circumstances and opinions.—These

travelled through America, under various pretexts, of curiosity, of philosophy, or of avoiding tyranny or persecution at home. This Talleyrand, who demanded the bribe and loan from our ambassadors, travelled through America as an emigrant; and, after his return to France, was appointed minister of foreign affairs. From its spies and other agents here, the French government received constant intelligence of the sentiments of the citizens, and the measures of the government of America; and was thus prepared to promote its own views, and defeat ours.

If ever there was a time in which it was proper for any government, to order aliens to depart out of its territory, it was proper for the American government to do so at this time. In other countries, this would have been done by a proclamation of the executive. This was a new case under the American Constitution, and proper for the interference of the legislature. Congress, therefore, passed a law,* the substance of which, in its own words, I shall here state.—

"*It shall be lawful for the President of the United States, to order all such aliens, as he shall judge dangerous to the peace and safety of the United States, or shall have reasonable grounds to suspect, are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States, within such time, as shall be expressed in such order.—Which order shall be served on such alien, by delivering him a copy thereof, or leaving the same at his usual abode, and be returned to the office of the secretary of state, by the marshall or other person to whom the same shall be directed.*"

But "*if any alien so ordered to depart shall prove to the satisfaction of the President, by evidence to be taken before such persons as the President shall direct, that no injury or danger to the United States will arise, from suffering him to reside therein, the President may grant a licence to such alien to remain within the United States, for such time as he shall judge proper, and at such place as he shall designate.—And the President may also require of such alien to enter into bond to the United States, in such penal sum as he may direct, with one or more sufficient sureties, to the satisfaction of the person authorised by the President to take the same, conditioned for the good behaviour of such alien during his residence in the United States, and for not violating his licence; which licence the President may revoke whenever he shall think proper.*

"*And if any alien, so ordered to depart, shall be found at large within the United States, after the time limited in such order for his departure, and not having a licence from the President to reside therein; or having obtained such licence shall not have conformed thereto; every such alien shall, on conviction thereof, be imprisoned for a term not exceeding three years, and shall never after be admitted to become a citizen of the United States.*

* 25th *June*, 1798—5 *U. S. L.* 143.

This law further enacts, "*That it shall be lawful for the President of the United States, whenever he may deem it necessary for the public safety, to order to be removed out of the territory thereof any alien who may be in prison in pursuance of this act; and to cause to be arrested, and sent out of the United States such of those aliens as shall have been ordered to depart therefrom, and shall not have obtained a licence as aforesaid, in all cases, where, in the opinion of the President, the public safety requires a speedy removal. And if any alien, so removed, or sent out of the United States, by the President shall voluntarily return thereto, unless by permision of the President of the United States; such alien, on conviction thereof, shall be imprisoned as long as, in the opinion of the President the public safety may require.*"

But it is provided, "*That it shall be lawful for any alien, who may be ordered to be removed from the United States, by virtue of this act, to take with him such part of his goods, chattles, or other property, as he may find convenient; and all property left in the United States by an alien who may be removed, as aforesaid, shall be subject to his disposal.*

One would have thought, that a law so reasonable in itself, so conformable to the law of nations, and the practice of all governments, and while it is altogether consistent with the Constitution, so necessary to the safety and defence of the United States; if it did not obtain all praise, would, at least have escaped all censure. Yet this law was not only vehemently opposed in Congress; but, even since it was passed, has been reprobated by ignorant, or wicked and seditious men; and, for their vile and selfish purposes has been held up to detestation, as unconstitutional and tyrannical. In many parts of the Union it has been used as a pretext and instrument, to inflame the passions of the people disturb the peace of the country, destroy respect for the laws, and relax the authority of the government; and, in one State to produce such a commotion, as threatens an insurrection, if not a separation from the Union.

It is proper for men in all stations and peculiarly in my station, to endeavor to counteract such mischievous passions, and miserable consequences. With this view, I shall examine the objections, which I have observed to have been offered against this law solemnly established by the authority of the United States.

1. It is objected to this law, that it is contrary to the express words of the Constitution.

We perhaps ought not to wonder, that this objection is made. Added to the want of sense and knowledge in some of the objectors, of modsty in most of them, and the general disposition, from prejudices excited and nourished by slander, to believe every act of administration wrong; the habit of opposition prepares their minds to make and re-

ceive it. For a habit of opposing every thing makes dreadful havoc, not only on the feelings and consciences but on the understanding itself.

This objection is made on two grounds.

The first is, that the Constitution declares, that "the migration or importation of such persons, as any of the States now existing, shall think proper to admit, shall not be prohibited by Congress, prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each persons."§ From this it it inferred, that, as Congress cannot yet prohibit such migration or importation, they cannot remove the persons, who have migrated or been imported; for this, it is said, would be, in effect prohibiting the migration or importation.

It is well known, that the prohibition in view respected only slaves. This was universally understood, at the time of the publication of the Constitution, during its discussion and ever since. All the members of the Convention know this. The Speaker of the House of Representatives of Congress, who was a member of the Convention, did in the argument on this bill in a committee of that House, expressly declare this to have been the avowed sense of the Convention, on this clause of the Constitution; and no man of any knowledge of the subject has ever seriously entertained a doubt of this. The Convention was so averse to the trafic in human beings, that they could not directly name slaves, slavery, or the slave trade. The southern members thought their States not yet prepared for the prohibition of this traffic. The other members agreed to give those States twenty years to think of it. In that space they would probably abolish the slave trade themselves; or, after that, Congress might do it. In the mean time, the Convention would not give slavery the sanction of being expressly named. Instead of the word *slaves*, the word *persons* was used; and, to correspond with this, the word *migration*, and explanatory of this, the word *importation*, as more properly applicable to slaves, or *persons* considered, not as aliens, but as *property*. Or considering this prohibition as repecting only slaves we find another reason for this construction, in the power reserved to Congress "to impose a tax on such *importation*; while no such power is expressed as to migration; and thus for construing these words as meaning a different manner of introducing slaves. Congress is restrained from prohibiting their *importation* by sea, or their *migration* by land, into any of the States; but may lay a duty on their first importation, not on any subsequent migration; the duty in that case being presumed to have been paid before.—While the prejudices or necessities *of the States then existing* were thus indulged; the Convention confined this indulgence to them, and did not restrain Congress from prohibiting the migration or

§ *Art.* 1, *Sect.* 9.

importation of slaves into any State *thereafter to be established*; but left them to the discretion of Congress. Whatever reason may be assigned for it, this is certain, that it was the plain meaning of the Convention, and has been the uniform construction of the Constitution, that the restraint laid on Congress, by this clause of the Constitution, applies only to the prohibition of introducing slaves.

But supposing this not the true construction of this clause of the Constitution, and supposing that Congress is thereby restrained from prohibiting the migration or importation of any aliens whatever; it does not follow, as a just consequence from this, that Congress can make no law to remove such aliens. A rule will not be extended beyond the strict words, if this extension will promote mischief; especially if it endanger the safety of the people, which is the supreme law. I would ask whether this restraint, supposing it to respect aliens generally, must not be limited to times of peace; or whether it must govern in extraordinary times of danger, or must then give way to the great rule of self-defence and general welfare? Let us try this construction by the rules of reasoning. It is a rule that, if an argument prove too much, it is unsound. Suppose a body of Frenchmen to arrive at Boston, with arms and ammunition, which men may carry for their own defence, and tell the people there, that they are *persons* who have migrated, to settle peaceably in the country. Another body of such emigrants, with the same tale in their mouths, arrive at New-York; another, at Philadelphia; another, at Norfolk; and another, at Charleston. Must the State Legislatures of Massachusetts, of New-York, of Pennsylvania, of Virginia, and of South Carolina, be convened, to order those several bodies of emigrants to depart out of their several States? Well; the Boston emigrants march peaceably into Connecticut; and the South Carolina emigrants into North-Carolina; and so of the others, till they all meet peceeably in Maryland, and then declare, that they are come, by order of the Directory, to settle there, and to prevail on the President and Congress, to give the tribute demanded by the Directory. All this they may do; and yet, if Congress had proceeded to make a law, to prevent their landing, or effect their removal, we should be told, that Congress cannot prohibit the migration or importation of aliens! This seems a strange absurdity. And yet the absurdity of this case is only altered, it is not removed by substituting the case on which Congress has acted. Spies are, at all times dangerous; they are generally not less, and they are often more dangerous than open enemies: and those who corrupt our opinions, and pervert our duties, are the most dangerous of all enemies. A power to make such law is clearly necessary, for the general defence and welfare of the United States; the care of which is properly deposited with the government of the United States.

For "the people of the United States, in order to form a more per-

fect union, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity;"* established a Constitution, by which objects of general concern to the nation are properly submitted to the management of the general government. And this government is expressly bound to "guaranty to every state in the union a republican form of government, and to protect each of them against invasion and domestic violence;"† and has "power to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the Constitution, in the Government of the United States, or any department or office thereof."‡ The restraint or expulsion of aliens, in times of war or danger, has, by almost all nations, been considered as a necessary measure of protection and self-defence: and, from the nature of the case the law of nations, and the general constitutional authority of the government, I cannot permit myself to doubt, that a power to restrain or expel them necessarily exists in the government of the United States, as in every government charged with the general welfare, the common defence, and protection against invasion and domestic violence. If this be a necessary and proper mean of accomplishing any object, with which the government of the United States is charged; the power of exerting it is clearly vested in that government. The difficulty of obtaining the universal consent of the individual states to any measure, however salutary, was sufficiently experienced, as the great evil to be remedied by the Constitution. And a construction, of this constitution were it admissible, will not be favored, which would leave the general defence of the nation at hazard, on the caprice of a single State.

But this law is said to be contrary to the express words of the Constitution, because the Constitution declares, *that* "*the trial* of all crimes shall be by jury."*

There is one general observation, which applies *to* all *the* objections *to this* law, from *the* Constitution. *It* is, *this*; *that* aliens are *not* parties *to this* instrument, and, *therefore*, can claim no benefit under *it*, unless *they* are expressly named. The constitution is made by "*the* people of *the* United States."† And for whose benefit? For *the* benefit of *the* people of *the* United States surely. *It* is *the* charter of *the* privileges of *the* citizens of *the* United States *to* which none but citizens of *the* United States can *thereby* claim *title*. The people of *the* United States *therein* limit *the* power of *their* government over themselves; but lay no restraint on *the* power of *their* government over aliens. This was not in their view at all. Until aliens become citizens, they are in *the* power

* *U. S. Const. Pream.* † *Const. Art.* 4. *sect.* 4.
‡ *Const. Art.* 1, *Sec.* 8.
* *Const. Art.* 3, *sect.* 2. † *Const. Preamble.*

of the ordinary legislature. The legislature may receive them, and admit them to become citizens; or may reject them, or remove them, before they become citizens. When they come here, they know, that they come at the discretion of the ordinary legislature, can claim no privilege as citizens, and have no reason to complain, if this legislature rem ve them, before they become citizens. The legislature may refuse to admit them to become citizens, by enacting that citizenship shall be acquired only by birth. If the legislature receive them, retain them, and admit them to become citizens; then, and not before, have they a right to claim the benefit of the Constitution made for citizens. This is clear reasoning. The citizens who made the Constitution, bargained for themselves, and all who, after them, should become citizens; but did not bargain for aliens. Would an American citizen removing into France, claim, as a citizen, the benefit of the French Constitution, against an act of the legislature? Would a man, received under the laws of hospitality, into the house of another, tell the master of the house, when he orders him to depart, because he suspects him of ill designs; "*I will not go, you have a lease of this house, you have admitted me, I will continue in it under your lease?*" Aliens are tenants at will, and may be removed at the discretion of the owner. When they become citizens, they become tenants on fixed terms, and cannot be removed but according to those terms: they are freeholders, and cannot be deprived of their rights, but on a known forfeiture regularly ascertained.

If, therefore, aliens have no right to remain, it is no deprivation of right to order them to depart; and, if it be no deprivation of right, it can be no punishment; and, if it be no punishment this order may be made, without any crime, on the mere suspicion or arbitrary will of the legislature, which, with respect to them, is sovereign, as, with respect to citizens, the Constitution is sovereign. Even a citizen may be deprived of his right to personal liberty, without any actual crime, on the mere suspicion of another, on which a magistrate deems it necessary to require security of the peace. So may an alien be deprived of our indulgence to remain among us, on the mere suspicion of the legislature, that his residence here is dangerous to the public peace. This, being no deprivation of right, but a mere denial of a favor; is no punishment, but a mere exercise of the right of self-defence, which the government of the United States, like that of every other nation, may exert at discretion, without any crime or any trial.

All that is said of a right to trial by jury is out of the question. That refers to an investigation of offences previous to punishment, or a deprivation of a right.—Here there is no offence, but a suspicion, alledged: and, as, even in the case of a citizen, he may be imprisoned, for the security of an individual; so, in the case of an alien, he may be removed,

for the security of the nation. And, in this, there is no punishment, because there is no deprivation of a right. It is neither an injury nor a punishment; it is a measure of self defence, inherent in every owner of a house, to turn out of his house a stranger, whom he does not choose to entertain longer.

I will again put the case of a stranger admitted, under the laws of hospitality, into a house. The owner thinks he has reason to suspect, that this stranger intends to rob or murder him; or to assist a gang of thieves, whom he suspects of this intention. He tells the stranger, that he has such suspicion and desires him to depart. If the stranger say, "*Your suspicions are wrong, you must prove them, carry me before a magistrate, and let me be tried and convicted, before you take upon you to turn me out of your house;*" would this be an answer? Shall the master of the house, in order to give the stranger the privilege of being tried and convicted, give him and his associates an opportunity of accomplishing the wicked purposes suspected? Suppose the master of the house reply, "*I am not well acquainted with your character, but whatever it be, I have a right to turn you out; go to my steward, and, if you can so explain yourself to him, as that he choose to permit you to remain, I agree; but if he order you to depart, you must go;*" would not this be reasonable? Would this be any punishment of the stranger? No; it is the right of self-defence. But, as a right to exercise this power will not authorise the master of the house wantonly to beat the stranger, or violently to take his money from him; so a right to remove an alien from our territory, does not authorise a power to punish him without a trial by jury.

That aliens, before they can be punished, or deprived of any right, for an offence, must be tried by a jury, results not from the express words of the Constitution, which refer not to them, but to citizens. It results from this, that our courts know no other mode of trial, and have no authority to adopt any other.

2. But, if this law should not be contrary to the express words, it is objected, that it is contrary to the principles of the Constitution, which distributes the legislative, judicial and executive powers into three departments; while this law confounds them all in the Executive; and this, it is said, establishes despotism.

I might rest the answer to this objection, of a confusion and accumulation of powers being a violation of the Constitution, on the observation already made, that this law operates upon none for whose benefit the Constitution was established, or whom the Constitution was intended to affect; and cannot, therefore, be a violation of the Constitution. It operates only on aliens. No citizen has any despotism to fear from this law. Any citizen may, notwithstanding this law, plot as many "treasons, stratagems, and spoils," as he pleases; and, if he can escape the judiciary, may bid the President defiance.

But, the fact is, there is no confusion of powers in this law, but such as convenience or necessity, consistently with the principles of the Constitution, introduces into many other laws, to which no man would dream of objecting.

The Constitution has not established, and no human Constitution can establish, a perfect, but only a modified, separation of powers. What work of man is perfect?—It is very common, and it is convenient and necessary, for the legislature to pass a law fixing certain principles, and leaving it to some other part of the administration, the executive or judiciary, to ascertain the cases to which such principles shall be applied, to detail the minute modifications, which no foresight can suggest, and experience alone can disclose; or to pass a law, which shall operate on a certain contingency, leaving it to some other part of the administration, to declare when this contingency occurs and the law begins to operate. This lessons not the authority of the legislature; for such discretion cannot be exercised by any other part of the administration, without the authority of the legislature; may be restrained, corrected, or suppressed whenever the legislature thinks fit; and is, therefore, altogether under the controul of the legislature. The legislature, therefore, only determines something, which it is necessary for them to determine; and leaves it to some other part of the administration, as cases shall occur, to determine something else respecting this, which the limited powers of man, the principles of just discrimination, and public convenience, render it impossible for them to determine. Were the legislature to take upon them to modify their laws to every case, they must be constantly in session; and human capacity would render it impossible for any one body of men, to discharge their task. Therefore, the legislature wisely contents itself with establishing general rules, and leaves, to some other part of the administration, authority to ascertain the modifications and exceptions. Thus the legislative power determines, that certain actions shall be punished; but, as there may be degrees of such actions, more or less aggravated, leaves it to the judiciary to ascertain the degree of punishment; and, as, in some cases, all punishment may be dispensed with, leaves it to the executive to pardon, at his discretion. All this is necessary for the sake of humanity, justice, and public convenience; and it seems absurd to say, that the principles of the Constitution are thereby violated

On such principles this Alien Act is framed. It establishes an authority in the President "*To order all such aliens, as he shall judge dangerous to the peace and safety of the United States, or suspect are concerned in any treasonable or secret machinations against the government thereof, to depart out of the territory of the United States.*" But, as a general exertion of this authority may not be necessary, it provides, "*That if any, alien so ordered to depart shall prove to the satisfaction of the President, that no injury or danger to the United States will arise, from suffering such*

alien to reside therein; the President may grant a licence to such alien to remain within the United States." What more prudent or proper method could the legislature have adopted? While they were in session, and a war was in view; must they wait, till there was a declared war, or an actual invasion, before they established the principle, that aliens might be removed, in a certain manner? When they established this principle, they were obliged to establish it without any exception? Or must they sit, or be convened, to decide on every case proper as an exception? This would seem, if not absurd and impracticable, at least, very inconvenient. Surely the legislature did better. Congress has, by this law, declared, that aliens are removable; just as that offenders are punishable; and has said that the President may choose, out of all, what aliens shall be removed, just as he may choose out of all what offenders shall be punished. The President may tell any alien, "*I will permit or licence you to remain*;" as he may tell any offender, "*I will pardon you.*" And, in doing this, Congress has violated no principle of the Constitution.

3. Lest this law, when tried by the words, and by the principles, of the Constitution, should appear unexceptionable, and escape censure; it has been endeavored to excite a clamour against it, by drawing a melting picture of the distress of aliens, who may thus be ordered to depart out of the country, at the will of one man.

This is all work of imagination. It cannot be denied, that there is a right in the United States, as in every other nation, to remove aliens; and that there may be cases in which the safety of the nation will render it necessary to exert this right.—And, I think, it cannot be denied, that, in the last session of Congress, the United States were, if any nation ever was, in a condition that required it, as a solemn duty, to exert this right. The rights and safety of individuals must never be put into competition with the rights and safety of a nation. Aliens have but an *imperfect* right, the right of hospitality and civility, to remain in any nation, to which they are not bound to permanent allegiance. And if the rulers of the nation, in which they have a temporary indulgence to reside, suspect any danger to the nation, from their residence, and order them to depart, they have *no right* to remain. The United States were threatened with danger from France, and by the same means which France has uniformly adopted, to bring danger and destruction on other countries; intestine divisions. Aliens have the least interest in the prosperity of this country, and owing the least duty, only a temporary duty, to it, were the most likely to yield themselves the readiest agents of France. And the little respect, which, in this country, is paid to the rights of election, gives them, here, an opportunity of mischief, which they could, in no other country, enjoy. Though some of our own citizens may be base enough to yield themselves as instruments of a foreign power, the Government of the United States, has no authority to remove them.

But it has, like every other government, in time of danger, authority to expel aliens; and the right and duty of common defence, and protection against invasion and domestic violence, required that this right of expulsion should be exerted. Nor was the exertion of this right proper only against French aliens. The principles professed by the government of France have excited through the world an enthusiasm, which nothing, but experience of their destructive consequences, can correct. There is, in all nations, a number of warm speculative men, combined together, to promote the diffusion and prevalence of this theoretic liberty. Many of these, either expelled or flying from their own country, reside in the United States; and are, here, it seems, systematically *united*, not in support of the principles of our government, but, of an imaginary political *millennium*, a government which never existed, and, while man remains as he is, never can exist; in support of the fanciful principles, which, in the progress of its revolution to anarchy and despotism, have brought so much misery on France, and on every country where the arts and arms of France have prevailed. These dogmatics, invincible by reason or experience, united in principles, however dispersed in place, as a nation of themselves, are enemies to all governments; and, like the preachers of a new religion, think all other rights and duties ought to yield to the great duty of establishing their principle. To this duty, they will sacrifice all other considerations; and nothing, however cruel or destructive, that can promote this, will, in their eyes be a crime. Such men will be dangerous to any country, in which they reside. Instigated by the zeal of proselytiss them apparent benevolence in their principles will give them an irresistible influence on the young and unexperienced. And no country, in which such men prevail, can hope for safety against the arts of France. Nor can any Frenchman more earnestly promote the views and success of France, than any native of any country, who by adopting her principles, has brought himself within the pale of this new political church. Insensible of error, and deaf to instruction, they are borne forward with the courage of conscience, the ardor of inspiration, and the obstinacy of impenitence, by an impetuous enthusiasm, to all the mischiefs, which guilt could effect. And wherever, there is no hope of conversion, while we are in danger, the exertion of the right of expulsion becomes a duty, which the rulers owe to the safety of the nation.

If there may be cases of humanity, which may make this exertion, where not absolutely necessary, savour of severity; the question is, with whom the power of indulgence may be best lodged, so as best to accomplish the great object, public safety, and most to favor humanity.

As a measure of national defence, this discretion, of expulsion or indulgence, seems properly vested in the branch of the government peculiarly charged with the direction of the executive powers, and of our

foreign relations. There is in it a mixture of external policy, and of the law of nations, that justifies this disposition.

It was never known, that a numerous and complex body of men had a more tender conscience, than an upright individual. Where many do wrong, each can cast the censure from himself upon others. But a responsible individual must take all the burden of the blame. Any man, with any claim to tenderness, would rather risk the success of that claim to an impartial and humane individual, than to a numerous body of men.

It remains, therefore, only to determine, whether the character of the President be such, as to render him a proper depository of this power of indulgence. Has the President no feelings of humanity? Is a life of piety and justice no ground of confidence? The character of the President is well known. And no alien, who meddles not with politics and plots, who favors not the views of our enemies, and injures not the peace, safety, or defence of the country, has any thing to fear from this law. Even with respect to dangerous aliens, Congress has provided, that the rights of humanity (so far as, consistently with the supreme law, the safety of the people, they can) shall be secured to them. For it is enacted, "*That it shall be lawful for any alien, who may be ordered to be removed from the United States, to take with him his property; or, if he leave any of it, that it shall remain subject to his disposal.*

But is all our pity to be extended to strangers; and shall we extend no care to ourselves, our wives, and our children? The French have threatened us with pillage, plunder, and massacre. Such threats they have carried into execution in other countries. They have threatened us with a party among ourselves, which will promote their views. Some of them, it is said, have told us, that we dare not resent their injuries; for there were Frenchmen enough among us, to burn our cities, and cut our throats. And, it seems, we dare not remove those gentle lambs! Gracious Heavens! are we an independant nation, and dare not do this? Shall our constitution, intended as a shield to defend, become a sword to wound us? Have we made a constitution, to restrain our administration from oppressing ourselves, and so restrain it, as to submit our cities to alien incendiaries, and our throats to alien assassins?

Vain is all our defence against our enemies without, if we guard not against enemies within. If we leave an Achan in the camp, can we hope for victory? If we leave a band of traitors in the fort, can we hope to defend it? If we suffer French spies to stroll through our cities, our harbors, our shores, and our country, and give information of all our strength, and all our weakness; how can we be guarded against attack? If we suffer them to remain here to give information of every ship that sails, that it may fall into the hands of French privateers; how can we protect our trade? If we suffer French agents to remain here, to cor-

rupt the minds of our citizens, our printers, and our officers, to pry into our councils, purchase our arms and ammunition, influence our opinions and elections, render our people careless, and our administration weak; what have we to expect, but all the horrors of a French invasion? What have we to expect, but to see our houses in flames, and our families in blood?

I trust in God, that this will not happen. I trust, the measures adopted by our administration, with cordial union among ourselves, will preserve us from this calamity. But if it should come upon us, we will curse those, who have lulled us with a sweet song of security, and gentle fraternity of the French; who, professing motives of œconomy have endeavored to tie up the hands of the administration from effectual measures of defence; and, under the pretence of valuing and seeking peace, do, in the surest manner invite war.

We are, at present, in a perilous state, and it is to be feared, on the brink of some calamity. Menaced with the resentment of a foreign nation, we are distracted among ourselves. In proportion to our dissentions, will be our danger; and our safety lies in love to our Constitution, and confidence in our administration. If the people will cordially unite in supporting active measures of the administration, France will change her tone, from resentment to complacency. But experience of her conduct towards all other nations must convince us, that it is her means only, and not her object, that she will change. Her object will remain the same, to reduce us to a subjection to her will. Let us beware, therefore, of supposing, that, when she *speaks* peace, she *means* peace. She will speak peace, while we support our adiministration; and again war, whenever she can persuade our people to oppose the administration of their government. *Divide and subdue* is her maxim.

With a view to lessen the grounds of distrust in our administration, so fatal to our own interest: and to encrease that confidence in it, so essential to our safety; I have endeavored, with candour and care, to examine the principles of a law, which has been made a pretext for vehement clamour. I have, I think, shewn that it is constitutional and necessary. I have said (what is well known) that there is such ground of confidence in the President, that there is no fear that he will suffer it to operate against any alien, who comes and remains honestly and innocently among us; and that he will exercise his authority only against aliens, who use the opportunity of their being here, for the purpose of disturbing our peace, alienating the minds of our citizens from our government, betraying our situation, corrupting our measures, or weakening our defence. And, I hope, it will appear, that, if our rulers had not exerted this authority, we should have just reason to say, they have betrayed their trust,

O! if the people would but love their Constitution, and confide in its wise and honest administration, and turn away from those who harrass their minds with vain suspicions; how happy might we be! May the God of Wisdom open our eyes to the excellence of our constitution, and the purity and prudence of our administration; and to the folly, madness, and wickedness of those demagogues, who mislead this people from their interests and duties, and glory in their guilt. May he wean us from all partialities and prejudices towards any foreign nation; unite our hearts in love and support of our government; and preserve us from the machinations of a government, ambitious, desperate, faithless, and corrupt; which flatters only to deceive; and caresses only to destroy.

FINIS.

BRITISH
13 OCT 85
MUSEUM